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July 18, 2003

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 19, 2003

Case Number: TSO-0026

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter the individual) to hold an access authorization. 1/ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on testimony and other evidence presented in this proceeding, the individual should be granted access authorization. As discussed below, I find that the individual has not met his burden to bring forward sufficient evidence to show that he should be granted access authorization.

I. History

This administrative review proceeding began with the issuance of a Notification Letter, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a detailed statement of the derogatory information.

The area of concern cited in the Notification Letter involves information that the individual has demonstrated a pattern of

1/ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

unreliability and financial irresponsibility. This behavior is subject to the provisions of 10 C.F.R. § 710.8(1) (hereinafter Criterion L). 2/

The Notification Letter identified the following matters as concerns:

(i) The individual had indicated in a Personnel Security Hearing that he had two judgments entered against him for unpaid hospital/medical bills. One judgment, dated May 2000, was in the amount of \$456. The other judgment, dated February 1996, was for \$3,300. The individual also had a third unpaid medical bill for \$323, dating from 1999.

(ii) The individual also had at least four consumer credit accounts that were unpaid and charged off during the period 2000 through 2001.

(iii) The individual and his wife declared bankruptcy in 1986.

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that Letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified, but did not call any witnesses. He submitted some additional documents into the record regarding his finances.

2/ Derogatory information covered by Criterion L includes information that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reasons to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include. . . a pattern of financial irresponsibility"

II. The Individual's Testimony and Additional Documentation

The information submitted by the individual at the hearing includes the following documentation: (i) the individual's updated credit report; (ii) a statement showing that one of the judgments for his medical bills has been fully paid; (iii) a statement showing regular monthly payments of at least \$50 towards another medical bill for which a judgment was entered, with a balance in February 2003 of about \$800 on that bill; (iv) a pay statement showing the individual's current income; (v) a pay statement showing the income of the individual's wife; (vi) a credit report for the individual's wife; (vii) statements showing payments of monthly home telephone bills; and (viii) an estimated monthly budget.

At the hearing the individual testified about his past and present financial picture. He stated that he felt overwhelmed by the debt, and is trying to restructure his spending and bill-paying. Transcript of June 4, 2003 Hearing (Tr.) at 29. He stated he is presently paying \$50 month towards one medical debt on which, at the time of the hearing, there was a balance of about \$650. Tr. at 9. He is paying \$25 per month to a collection company towards another set of eight medical debts of \$458, \$386, \$323, \$35, \$202, \$115, \$66, and \$2,652. Tr. at 22. Individual's June 5 Exhibit #5 (Individual's Budget). Most of these debts are approximately three to four years old, although the \$2,652 amount is for a medical procedure that took place within the last year. The individual indicated that as each debt is paid off, the \$25 payments will be applied to another debt, until the full indebtedness has been paid. Tr. at 22.

The individual indicated that he is not making any payments towards any of the consumer debts, and his credit report indicates that these debts have been "written off" by the various creditors. Most of the consumer debt is approximately three to four years old, but there is some debt that is older. The unpaid consumer bills amount to between \$5,000 and \$10,000. Individual's June 5 Exhibits #4 and #5.

III. Standard of Review

The Hearing Officer's role in these Part 710 proceedings is to provide the individual involved with an opportunity to furnish information to mitigate security concerns, to evaluate the information presented by the DOE Office and the individual, and to render an opinion based on that evidence.

The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. See 10 C.F.R. § 710.7(a).

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not like a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we use a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of an access authorization. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990)(strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

IV. Analysis

As stated above, there are three types of financial issues cited in the Notification Letter that give rise to a security concern under Criterion L: (i) the individual has a history of non-payment of medical bills, including two bills for which judgments were entered; (ii) the individual has had a number of unpaid credit card debts within the past 4 years; (iii) the individual and his wife declared bankruptcy in 1986. I must consider whether there is evidence that mitigates these concerns. See 10 C.F.R. § 710.7(c).

The individual does not make any serious claim that his failure to pay his bills was due to financial hardship. Rather, his approach in this case was to show that he has reformed his spending and

bill-paying habits, and to establish that he is now on a more stable financial track. Tr. at 6, 29.

Based on the individual's testimony and documentary evidence, I believe that the individual has made some efforts to bring his debts under control and to curb his spending. He has been making his agreed-upon payments towards several of the medical bills. He has fully paid off one of the judgments for unpaid medical bills, and is less than 12 months from completing full pay off of the judgment related to the other medical bill. He is up to date on his home mortgage payments and telephone bills. Individual's June 5 Exhibit #5. He has made some inquiries about a consumer counseling program. He has eliminated some non-essential expenses from his budget, such as cable TV, and has reduced his expenses for restaurant meals. Tr. at 32-33. He has no open credit cards at this time, and pays cash for his purchases. Tr. at 39-40. He no longer receives calls from collection agencies. The individual's wife has a full time job and is able to make a significant contribution to the family's finances. Thus, having recognized that he has difficulty managing his money, the individual is now beginning to implement strategies to solve the problem. Tr. at 38. This is all in the individual's favor.

However, after evaluating the record as a whole, I find that the Criterion L concerns have not been resolved. This individual has a history of significant financial problems dating from the 1986 bankruptcy. To resolve the security concerns arising from this behavior, the individual should demonstrate a stable financial pattern that covers a significant period of time. The individual has not demonstrated that he has achieved that stable financial pattern.

In this regard, I note that it will be a number of years before he is even close to paying off the medical debts he has agreed to pay at the \$25 per month level. I recognize that a debt, even a significant one, that is being paid off regularly does not necessarily create a security concern. However, in this case, I am to consider whether there has been mitigation of the concern regarding individual's long pattern of financial instability and refusal to pay bills. That pattern led to the judgments in 1996 and 2000. More recently, within the last year, the individual failed to pay another medical bill, and that bill was rolled into the \$25 per month collection package. I therefore believe that in this case, to resolve the security concern, the individual should show a longer period of timely, regular payment of medical and

other bills, in order to demonstrate that the concern regarding his financial responsibility has been resolved.

There is also remains a concern involving the individual's control and understanding of his current finances. I note that the individual has not yet followed through on his plan to obtain consumer counseling. Further, in the last several months he increased his overall indebtedness by obtaining two new personal loans, using his cars as collateral. He is paying \$66 and \$111 per month to service those loans. Tr. at 45. The individual submitted a budget indicating that he has approximately \$750 per month left over after having met his monthly expenses. However, he could not account for what happens to that amount. Tr. at 48-49. These facts suggest to me that the individual's finances at this point are still not under reasonable control, and that he still does not have a solid understanding of his monthly income and expenses. In fact, the individual himself recognizes that his financial picture is not yet a stable one. Tr. at 53.

V. Conclusion

As indicated by the foregoing, I find that individual has not resolved the Criterion L security concerns set forth in the Notification Letter. Accordingly, it is my determination that the individual should not be granted access authorization.

The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: July 18, 2003